



FEDERAL ELECTION COMMISSION
Washington, DC 20463

NOV - 5 2015

Foster Friess
P.O. Box 9790
Jackson, Wyoming 83002

RE: MUR 6740

Dear Mr. Friess:

On April 28, 2015, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on October 27, 2015, voted to exercise its prosecutorial discretion to dismiss the allegations that you violated the Act in connection with alleged coordinated payments to secure the endorsement of Robert L. Vander Plaats. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1643.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", followed by a long horizontal line.

Mark Shonkwiler
Assistant General Counsel

Enclosure(s)
Factual and Legal Analysis

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5
6 In the Matter of)
7) MUR 6740
8 Rick Santorum)
9 Rick Santorum for President)
10 and Nadine Maenza in her official capacity as treasurer)
11 Robert L. Vander Plaats)
12 The Family Leader, Inc.,)
13 c/o Robert L. Vander Plaats, President)
14 Leaders for Families and Chuck Hurley)
15 in his official capacity as treasurer)
16 National Organization for Marriage)
17 Brian Brown, President of the National)
18 Organization for Marriage)
19 Foster Friess)
20 Red, White and Blue Fund)
21
22

23 **I. INTRODUCTION**

24 This matter concerns several allegations raised by Complainant in three submissions filed
25 with the Commission.¹ Respondents Rick Santorum, Rick Santorum for President and Nadine
26 Maenza in her official capacity as treasurer (the "Santorum Committee"), Robert L. Vander
27 Plaats, The Family Leader Inc., Leaders for Families and Chuck Hurley in his official capacity as
28 treasurer, National Organization for Marriage ("NOM"), Brian Brown, President of the National

¹ Complainant filed the following submissions: the original Complaint, dated June 13, 2013; the Supplemental Complaint, dated July 25, 2013; and the Second Supplemental Complaint, dated April 2, 2015. The allegations in the Second Supplemental Complaint are largely based on *Big Money*, a book written by Kenneth Vogel and published in 2014.

1 Organization for Marriage, and Red, White and Blue Fund submitted responses denying the
2 allegations.² Respondent Foster Friess did not provide a response.

3 First, Complainant alleges that NOM, an incorporated 501(c)(4) nonprofit organization,
4 and unnamed “officers and major supporters” of NOM may have provided funds to The Family
5 Leader, Inc., an Iowa nonprofit corporation, to induce its President Robert L. Vander Plaats³ to
6 endorse 2012 presidential candidate Rick Santorum in advance of the Iowa Republican Party’s
7 January 3, 2012 Iowa Caucus. Compl. at 1-2. Second, Complainant alleges that Foster Friess, a
8 Santorum supporter,⁴ also may have played a role in securing Vander Plaats’s endorsement of
9 Santorum. Second Suppl. Compl. at 2-3. Third, Complainant alleges that NOM and Friess
10 secured Vander Plaats’s endorsement in coordination with the Santorum Committee⁵ and that,
11 consequently, NOM and Friess made, and the Santorum Committee received and failed to
12 disclose, prohibited corporate or excessive in-kind contributions. Compl. at 2. Fourth,
13 Complainant alleges that NOM, NOM president Brian Brown, and Vander Plaats coordinated
14 with Santorum and the Santorum Committee to fund communications distributed by the Leaders

² The Santorum Committee and Santorum filed a joint response, which included affidavits from Santorum and the committee’s treasurer, Nadine Maenza. See Santorum Resp.; Aff. of Rick Santorum (Sept. 12, 2013) (“Santorum Aff.”); Aff. of Nadine Maenza (Sept. 12, 2013) (“Maenza Aff.”). NOM and Brown filed a joint response and a supplemental response. See NOM Resp.; NOM Supp. Resp. The Family Leader, Inc. and Vander Plaats provided an affidavit from Vander Plaats as its joint response. See Aff. of Robert L. Vander Plaats ¶ 2 (July 31, 2013) (“Vander Plaats Aff.”). Leaders for Families Super PAC filed its own response, which included an affidavit from its treasurer, Chuck Hurley. See Aff. of Chuck Hurley (July 31, 2013) (“Hurley Aff.”). The Red, White and Blue Fund also filed a separate response, attached to which was an affidavit from its founder and Executive Director Nicholas Ryan. See Red, White and Blue Fund Resp.; Aff. of Nicholas Ryan (June 5, 2015) (“Ryan Aff.”).

³ Vander Plaats is an Iowa-based political activist who is allegedly the principal for two entities, The Family Leader, Inc., and The Family Leader Foundation. See Compl. at 2; Supp. Compl. at 2, 4; Shushanna Walsh and Michael Falcone, *Iowa Conservative Leader Mired in Controversy After Rick Santorum Endorsement*, ABC NEWS (Dec. 23, 2011) (attached to Complaint).

⁴ Friess allegedly traveled with Santorum and provided him with certain advice.

⁵ The Santorum Committee was Santorum’s principal campaign committee and Nadine Maenza is its treasurer. Maenza is a respondent in this matter in her official capacity as treasurer of the committee.

1 for Families Super PAC,⁶ an independent-expenditure-only political committee that supported
2 Santorum's candidacy. *Id.* at 1-2. Fifth, Complainant alleges that Santorum may have been
3 coordinating communications with Leaders for Families and Red, White and Blue Fund, another
4 independent-expenditure-only political committee that supported Santorum's candidacy, through
5 Friess, a contributor to those organizations,⁷ and thus Santorum allegedly received undisclosed
6 excessive contributions from those entities. Second Supp. Compl. at 4. Lastly, Complainant
7 alleges that The Family Leader contributed its "voter list" to the Santorum Committee, which did
8 not disclose its alleged receipt of the list. Compl. at 4.⁸

9 Respondents deny the allegations. They criticize the vagueness of Complainant's
10 allegations; contend that the alleged facts, if true, fail to establish violations of the Act; and deny
11 that they made expenditures to secure Vander Plaats's endorsement of Santorum, coordinated the
12 funding of the Leaders for Families Super PAC, or shared any voter lists.

13 As explained below, the Commission exercises its prosecutorial discretion to dismiss the
14 allegations that (i) Respondents violated the Act in connection with alleged payments from NOM
15 and Friess in coordination with the Santorum Committee to secure Vander Plaats's endorsement
16 of Santorum and (ii) the alleged coordinated communications distributed by the Leaders for
17 Families Super PAC in support of Santorum's candidacy. *See Heckler v. Chaney*, 470 U.S. 821
18 (1985). The Commission could not agree by the required four votes as to the disposition of the

⁶ The Leaders for Families Super PAC — which Complainant misidentifies as "Families for Leaders" —
"was formed in Dec. 2011 to help maximize Robert L. Vander Plaats's endorsement of Rick Santorum for President
two weeks prior to the Iowa Caucus vote, by thoroughly broadcasting it to Iowa Caucus voters." Hurley Aff. ¶ 2.

⁷ Friess contributed \$2.1 million to the Red, White and Blue Fund and \$50,000 to Leaders for Families PAC.
Compl. at 2; Second Supp. Compl. at 2.

⁸ Complainant also questions whether (i) NOM and Vander Plaats may have expended federal contributions
for personal use and (ii) NOM may have "placed Vander Plaats and Mr. Santorum in violation of using funds from
unknown sources." *Id.* The available information before the Commission about these questions, however, does not
provide reason to believe that a violation of the Act may have occurred.

1 allegation that the Santorum Committee may have coordinated communications with Red, White
2 and Blue Fund. The Commission, moreover, concludes that there is no reason to believe that
3 Respondents violated the Act as to the voter list.

4 II. FACTUAL BACKGROUND & LEGAL ANALYSIS

5 A. Alleged Payments From NOM and Friess in Coordination with Santorum to 6 Secure Vander Plaats's Endorsement of Santorum

7 Complainant alleges that NOM and Friess paid Vander Plaats, through organizations he
8 controlled, to endorse Santorum in advance of the Iowa Republican Caucus and that Santorum or
9 his committee or agents worked with the other Respondents to obtain payment for Vander
10 Plaats's endorsement. Compl. at 1, 3; Supp. Compl. at 2, 4; Second Suppl. Compl at 2, 4.

11 1. Factual Overview

12 Complainant alleges that before the January 3, 2012 Iowa Caucus, Vander Plaats solicited
13 three Republican presidential candidates, including Santorum, to pay him \$1 million to secure
14 his endorsement. Compl. at 2. Complainant asserts that Santorum must have actually paid for
15 Vander Plaats's endorsement because Vander Plaats subsequently endorsed Santorum and
16 launched Leaders for Families Super PAC to advocate for Santorum's election. *Id.* at 3.

17 Complainant contends that a third party likely paid to secure Vander Plaats's
18 endorsement for Santorum because Santorum did not have \$1 million and alleges that NOM
19 likely provided the funds because Santorum, Vander Plaats, and NOM's leaders had worked
20 together in connection with prior issue advocacy efforts and NOM "had the resources and the
21 reasons to secure Bob Vander Plaats' endorsement of [Santorum]." *Id.* at 3, 8. Complainant
22 suggests that this "resulted in . . . [NOM], its leadership and major donors contributing up to \$1
23 million that [Vander Plaats] sought for his presidential endorsement," and that "NOM likely

1 helped pay and raise the \$1 million for [Vander Plaats's] and Mr. Hurley's endorsements and
2 also helped create" Leaders for Families Super PAC. *Id.*⁹

3 Complainant cites \$80,000 in payments in 2011 from NOM to The Family Leader and an
4 organization identified as the Iowa Family Policy Council that shares the same address. *Id.* at 3.
5 Complainant surmises that "[i]t is likely that the \$80,000 paid directly to Mr. Vander Plaats's
6 organizations in 2011 could have easily constituted NOM's down payment toward securing his
7 \$1 million endorsement of [Santorum]." *Id.* The Complainant also notes that The Family
8 Leader raised \$814,817 during its 2012 fiscal year, compared to \$323,081 in 2011, and that
9 another Vander Plaats organization, the Family Leader Foundation, Inc., received \$468,446.¹⁰
10 Supp. Compl. at 2, 4. Complainant contends that these facts support the allegation "that Mr.
11 Vander Plaats received a vast sum of money in exchange for his endorsement" of Santorum. *Id.*
12 at 2.

13 Complainant also asserts that Friess, too, may have helped secure Vander Plaats's
14 endorsement. *See* Second Suppl. Compl. Complainant states that "when the endorsement
15 negotiations were taking place between Mr. Santorum, his Campaign and Mr. Vander Plaats, Mr.
16 Friess was in Iowa traveling with Mr. Santorum and was a very likely participant in the
17 endorsement negotiations." *Id.* at 2. Complainant notes that shortly after Vander Plaats's
18 endorsement, Friess gave \$81,000 to Red, White and Blue Fund, of which \$75,000 "appears to

⁹ Hurley is the treasurer of Leaders for Families Super PAC, and he has responded to the allegations raised by Complainant in that official capacity. Complainant does not clearly assert that Hurley played any personal role in the alleged coordination scheme, nor does he otherwise address Hurley's own endorsement of Santorum.

¹⁰ The Complainant speculated that the \$468,446 of income to Vander Plaats's Family Leader Foundation, Inc. "could well reflect additional money that came into Mr. Vander Plaats as a result of his endorsement of Mr. Santorum." *Id.* at 4.

1 have then been transferred a few days later to the Leaders for Families PAC,” and \$50,000
2 directly to the Leaders for Families PAC. *Id.* at 4.

3 Finally, Complainant alleges that Santorum or his committee or agents worked with the
4 other Respondents to obtain payment for Vander Plaats’s endorsement. Complainant bases this
5 allegation on press reports indicating that Vander Plaats discussed with candidates his desire to
6 advertise his endorsement, including the cost of that advertising, and that Santorum admitted
7 discussing money with Vander Plaats ahead of the press conference at which Vander Plaats
8 announced his endorsement. Compl. at 5.

9 The Responses deny these allegations. Vander Plaats declares that neither The Family
10 Leader nor he “ever solicited or received any money or thing of value from anyone, directly or
11 indirectly, to secure [his] endorsement of Rick Santorum.”¹¹ Vander Plaats Aff. ¶ 2.¹² NOM,
12 moreover, asserts that they “did not pay the Family Leader and Mr. Vander Plaats any money to
13 secure their endorsement of” Santorum. NOM Resp. at 1. And Santorum declares in a sworn
14 affidavit that: (i) “There were no payments from the Santorum campaign or promises of

¹¹ Vander Plaats and Hurley both assert that Vander Plaats made his endorsement “independent of all candidates and campaigns.” Vander Plaats Aff. ¶ 4; Hurley Aff. ¶ 3. Each also contends that Santorum’s subsequent public statement that he first learned of Vander Plaats’s endorsement through the media on December 20, 2011, is evidence that Santorum did not pay for Vander Plaats’s endorsement and did not coordinate expenditures. Vander Plaats Aff. ¶ 4; Hurley Aff. ¶ 3.

¹² According to Vander Plaats:

Any mention of the need for money was simply stating the fact that my endorsement two weeks prior to the Iowa Caucus vote would have little effect unless it was quickly and thoroughly broadcast to the Iowa Caucus voters. Therefore, phone calls, television ads and radio ads needed to be purchased. Realizing the Santorum for President Campaign did not have the resources to maximize the impact of my endorsement, I independently secured the necessary funds via my contacts, post-endorsement, directing their donations to the Leaders for Families Super PAC.

Id. ¶ 3. The assertions in Vander Plaats’s affidavit are consistent with his contemporaneous statements described in press accounts attached to the original Complaint in this matter. See Shushanna Walsh and Michael Falcone, *supra*; Shannon Travis, *Santorum: Vander Plaats Said ‘He Needed Money to Promote the Endorsement,’* CNN (Dec. 22, 2011); Jennifer Jacobs, *Iowa Evangelicals Skeptical They Can Unite Behind One Candidate for Caucuses*, DES MOINES REG. (Dec. 20, 2011).

1 payment to anyone or any group in exchange for an endorsement for our campaign or my
2 candidacy"; (ii) "[he] did not solicit contributions for any third party organization sponsored by
3 Bob [Vander Plaats]"; and "[he] neither promised nor paid anything of value to Bob [Vander
4 Plaats] in exchange for his personal endorsement of [Santorum's] candidacy."

5 2. Analysis

6 A payment to secure the endorsement of a presidential candidate to help win a party
7 caucus — an "election" within the meaning of the Act, *see* 52 U.S.C. § 30101(1)(B) — would
8 constitute an expenditure, as it would be a payment "for the purpose of influencing" a federal
9 election. *See id.* § 30101(9) (defining expenditure); 11 C.F.R. § 100.111(a) (same).

10 An expenditure that is made in cooperation, consultation, or concert with or at the request
11 or suggestion of a candidate, his authorized political committees, or their agents would constitute
12 an in-kind contribution to the candidate. *See* 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R.
13 § 109.20.¹³ Any such contribution must comply with the relevant limits, prohibitions, and
14 disclosure requirements of the Act. *See, e.g.,* 52 U.S.C. §§ 30104(b), 30116(a), (f), 30118.

15 The available information before the Commission in this matter is insufficient to indicate
16 whether the payments identified by Complainant *secured* Vander Plaats's endorsement of
17 Santorum, even if the fortunes of Vander Plaats's organizations may have increased as a result of
18 his endorsement of Santorum. Furthermore, there is insufficient available information that
19 Santorum or his agents acted in concert to obtain a third party's payment to Vander Plaats to
20 endorse Santorum. Based on the circumstances, the Commission concludes that pursuing this

¹³ Complainant did not identify any allegedly coordinated communications, but focused on NOM's contributions to Vander Plaats or his organizations. Accordingly, the allegedly coordinated expenditures here would be governed by those provisions of the Act and regulations that address coordinated expenditures generally, that is, 52 U.S.C. § 30116(a)(7)(B)(i) and 11 C.F.R. § 109.20, rather than the coordinated communications regulation at 11 C.F.R. § 109.21.

1 matter further would not be an efficient use of the Commission's resources and exercises its
2 prosecutorial discretion to dismiss the allegations that Respondents violated the Act as alleged in
3 connection with the claimed payment to Vander Plaats for his endorsement.

4 **B. Alleged Coordinated Communications**

5
6 **1. Factual Overview**

7 Complainant alleges that the Santorum Committee may have coordinated
8 communications with Leaders for Families and Red, White and Blue Fund, through NOM,
9 Brown, Vander Plaats, and Friess, and thus Santorum allegedly received undisclosed excessive
10 contributions from those entities. Compl. at 1-2; Second Supp. Compl. at 4.

11 **a. Alleged coordination between NOM, Brown, Vander Plaats,**
12 **and Santorum and the Santorum Committee**

13 Complainant alleges that NOM, Brown, and Vander Plaats coordinated with Santorum
14 and the Santorum Committee to fund communications distributed by the Leaders for Families
15 Super PAC that supported Santorum's candidacy. *Id.* at 1-2. Specifically, Complainant alleges
16 that Santorum may have coordinated with NOM and Vander Plaats to fund the Leaders for
17 Families Super PAC so that it, in turn, could support Santorum through "robocalls" and
18 television and radio commercials. Compl. at 1-2.

19 To support these allegations, Complainant relies on the alleged close ties between NOM
20 and Leaders for Families Super PAC, including their retention of the same legal and consulting
21 personnel, and that some of NOM's biggest donors contributed to both organizations.
22 Specifically, Complainant highlights that (i) NOM's Political Director, Frank Schubert, also
23 directed the Iowa campaign of Leaders for Families Super PAC; (ii) Leaders for Families Super
24 PAC was incorporated by James Bopp, an attorney retained also by NOM; and (iii) Terry Caster,
25 a NOM donor, also contributed to Leaders for Families Super PAC. *Id.* at 3-4. Complainant

1 contends that such facts suggest that Santorum, Brown, NOM, and Vander Plaats coordinated to
2 fund or to direct the Leaders for Families Super PAC's communications that supported
3 Santorum's candidacy.

4 Respondents, however, assert that Leaders for Families Super PAC's funding was
5 derived from Vander Plaats's independent activities. *See* Vander Plaats Aff. ¶¶ 3, 5 (averring
6 that "neither The [Family Leader], nor [he] individually, ever coordinated funding or any other
7 campaign activity, directly or indirectly, with the Santorum for President Campaign, or any other
8 prohibited person or entity" and that they adhered to the "coordination prohibitions"); Hurley
9 Aff. ¶ 2, 4. Leaders for Families Super PAC, moreover, represents that "no one with Leaders for
10 Families Super PAC had any discussions with, or coordinated funding or any other campaign
11 activity with, the Santorum for President Campaign, or any other prohibited person or entity."
12 Hurley Aff. ¶ 4. NOM also represents that "[t]here was no coordination between respondents
13 and Mr. Santorum, Santorum's campaign, or Mr. Vander Plaats for the purpose of funding the
14 Leaders for Families committee," NOM Resp. at 1, and that it "did not help to create the Leaders
15 for Families committee," and was not involved in that committee's operation, *id.* at 2. And
16 Santorum and the Santorum Committee deny the allegations and assert that Complainant failed
17 to identify any communications that may have been coordinated as defined in 11 C.F.R.

18 § 109.21. Santorum Resp. at 2.

19 **b. Alleged coordination between Red, White and Blue Fund and**
20 **Leaders for Families and Santorum through Friess**

21 Complainant also alleges that Santorum may have been coordinating communications
22 with Red, White and Blue Fund and Leaders for Families through Friess and thus that the
23 Santorum Committee allegedly received undisclosed excessive contributions from those entities,

1 See Second Supp. Compl. The Santorum Committee and Red, White and Blue Fund deny these
2 allegations. Freiss did not submit a response.

3 **2. Analysis**

4 A payment for a “coordinated communication” is an in-kind contribution from the payor
5 to the candidate with whom it is coordinated. 11 C.F.R. § 109.21(b). Under Commission
6 regulations, a communication is considered coordinated with a candidate if it: (a) is paid for by a
7 person other than the candidate; (b) satisfies one of the content standards of the Commission’s
8 coordination test; and (c) satisfies one of the conduct standards of the Commission’s
9 coordination test. *Id.* § 109.21(a). If a communication is coordinated, then the resulting in-kind
10 contribution may constitute an excessive or prohibited corporate contribution in violation of
11 52 U.S.C. § 30116 or 30118, which NOM and Santorum for President may have been required to
12 disclose under 52 U.S.C. § 30104(b).

13 The available information before the Commission in this matter is insufficient to
14 determine that Santorum or his agents acted in concert with Brown, NOM, and Vander Plaats to
15 fund the Leaders for Families Super PAC and coordinate its communications. Based on the
16 circumstances presented, the Commission concludes that pursuing this matter further would not
17 be an efficient use of the Commission’s resources. Accordingly, the Commission exercises its
18 prosecutorial discretion to dismiss the allegations that NOM, Brown, and Vander Plaats made,
19 and Rick Santorum or Santorum for President received, excessive or prohibited corporate in-kind
20 contributions in violation of 52 U.S.C. § 30116(a), (f), and 30118(a), or that NOM and Santorum
21 for President failed to disclose NOM’s expenditures or contributions to Leaders for Families in
22 violation of 52 U.S.C. § 30104(b).

1 Furthermore, the Commission could not agree by the required four votes as to the
2 disposition of the allegation that the Santorum Committee may have coordinated
3 communications with Red, White and Blue Fund.

4 **C. Alleged Unreported Receipt of a "Voter List" from The Family Leader by**
5 **Santorum Committee**

6 In addition, Complainant alleges that The Family Leader provided a "voter list" to
7 Santorum for President, and that Santorum for President neither disclosed it as an in-kind
8 contribution nor identified any expenditure related to its purchase. Compl. at 4.

9 However, the information before the Commission does not support this claim, and
10 Respondents have represented under oath that neither Vander Plaats nor his organizations ever
11 provided any lists or "things of value" to the Santorum campaign. *See* Vander Plaats Aff. ¶ 5;
12 Maenza Aff. ¶ 6; *see also* Santorum Resp. at 3. The Commission, consequently, finds that there
13 is no reason to believe that Santorum for President and Nadine Maenza in her official capacity as
14 treasurer failed to disclose an in-kind contribution or expenditure in violation of 52 U.S.C.
15 § 30104(b).

16 **III. CONCLUSION**

17 For the foregoing reasons, the Commission exercises its prosecutorial discretion to
18 dismiss the allegations that (i) Respondents violated the Act in connection with alleged payments
19 from NOM and Friess in coordination with the Santorum Committee to secure Vander Plaats's
20 endorsement of Santorum and (ii) the alleged coordinated communications distributed by the
21 Leaders for Families Super PAC in support of Santorum's candidacy. *See Heckler*, 470 U.S.
22 821. The Commission could not agree by the required four votes as to the disposition of the
23 allegation that the Santorum Committee may have coordinated communications with Red, White

- 1 and Blue Fund. The Commission also concludes that there is no reason to believe that
- 2 Respondents violated the Act as to the voter list.

OUTLINE